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REFLECTIONS

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The LAW, LAWYERS, &c.

REFLECTIONS

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C. K. OGDEN

R E F L E C T I O N S

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H I N T S

F O U N D E D U P O N

EXPERIENCE and FACTS,

· T O U C H I N G

The LAW, LAWYERS, OFFICERS, ATTOR-
NEYS, and *others* concerned in the AD-
MINISTRATION of JUSTICE.

Humbly submitted to the

Confideration of the LEGISLATURE.

The Common Law of *England* has fared like other
Venerable Edifices of ANTIQUITY, which rash and unex-
perienced Workmen have ventured to new dress and refine
with all the Rage of Modern Improvement.

BLACKSTONE.

L O N D O N,

Printed for L. DAVIS and C. REYMERS,
against *Grays-Inn, Holborn,*
MDCCLIX.

REFLECTIONS

ON

THE

FOUNDATIONS

OF THE

CONSTITUTION

OF THE UNITED STATES
OF AMERICA
AND THE
RELATION OF THE
JUDICIAL DEPARTMENT
TO THE
OTHER DEPARTMENTS
OF THE GOVERNMENT

BY

JOHN MARSHALL
CHIEF JUSTICE OF THE
SUPREME COURT OF THE
UNITED STATES

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REFLECTIONS, &c.

THE Sage *Montesquieu* (whose Treatise of the Spirit of Laws can never be enough praised and admired for the amiable Spirit of Liberty and Benevolence that it breaths) has told us that the Liberty of the Subject consists in a peace of mind which arises from a satisfactory Confidence that every Man has, of being secure from Oppression; and cannot be had in any State, unless the Government thereof be so constituted by wise and good Laws, and those Laws be so faithfully and impartially executed, as that One Man need not be afraid of another: And has observed that this

B

inestimable

inestimable Blessing is established by the Laws of *England*, but declines to examine or enquire whether We really enjoy this Liberty or not; thereby intimating as if he had some doubt about it, or at least some Apprehension that we are in Danger of losing this inestimable Jewel.

The ingenious Author of the *Estimate*, &c. has shewn, from a Variety of Proofs, that the ruling Manners and Principles of the Times have produced such a general Debility among us as naturally leads to the Destruction of every thing that is dear and valuable, and seems to leave it to the candid Consideration of every impartial Man, how far any Part of our late Conduct has weakened the Constitution, or tends to our absolute Perdition and Loss of Liberty. This occasioned the following Reflections with respect to some Particulars, touching the Laws of this
Country,

Country, which we see are the Ad-
 miration of all around us, however
 we ourselves may have lately been re-
 gardless about them.

If it be true, that Liberty is established by the Laws of *England*, our Freedom must then depend upon the Knowledge, Capacity, Integrity and Courage of the Professors of the Law, as well as upon the Virtue and Incorruption of the Legislature, who from Time to Time alter those Laws, or make new ones.

Justice in respect to our Judges, and so far as it regards private Property between Subject and Subject, was never more equally and impartially administered than it has been for the last thirty or forty Years; those who preside in our Courts are not removeable at Pleasure; have no Voice in the Legislature, and Juries under

B 2

their

their present Regulation are not easily corrupted: Besides, the illustrious Example of that Great Personage, who, after having, with the greatest Honour, served the King and his People in the highest Offices at the Barr, and held the Ballance above twenty Years, in the supreme Seats of Law and Equity with the greatest Ability, Knowledge and Integrity, has not a little contributed to support the Truth of this Assertion.

This is truly said of the Administration of Justice, so far as it regards private Property between Subject and Subject, of late Years; but if a Time should come (which is to be feared is near at hand) when the Law shall be brought into Contempt through the Ignorance and Corruption of its Professors, what then will be the fatal Consequence, may easily be foreseen.

The Laws of *England* being the Great Bulwarks of our Lives, Liberty, and Property; the Study and Knowledge of those Laws ought to be encouraged and rewarded; for how good and wholesome soever they are in themselves at present, they will be useless to the Subject when once they become unknown, vague, or uncertain. Hence it follows that without Men of Learning and Knowledge in the Laws of this Country, the Liberty of the Subject will be precarious, and the Constitution insecure. It seems therefore a Matter of very interesting Consideration, that the Laws of this Land, so admired and envied by all around us, should be well cultivated and known, by encouraging Men of Parts, Learning and Integrity to the Study and Practice of them.

But

But alas! upon looking back a few Years we shall discover that every artful Scheme has been contrived and set on foot by some Persons formerly in Power, to lessen and disgrace both the Law and its Professors.

About the Beginning of the present Reign an Attack was made upon *Westminster Hall*, by issuing Commissions under the Great Seal to empower Col. *De'Veil*, and many other Commissioners to enquire into the Duties and Fees of All the Officers in the several Courts of Law and Equity; when after the strictest Scrutinies and Examinations by Juries and Witnesses on Oath, it was proved that very few of the Fees of any Officer had been encreased for many Years past, although it then appeared in many Instances that the Duty of several Officers had been made greater by several late Acts of Parliament

Parliament, for which additional Duty, little or no Fees are taken or allowed, although Money, at this Time, is not of much more than one third Part of the Value that it was about a Hundred Years ago. This appearing to be the Truth of the Matter, to the Disappointment of those who set those Commissions of Enquiry on foot, the Business was dropt, and the Returns of the several Juries were never published.

This Scheme to throw Dirt upon the Law and its Professors proving abortive, several others were soon afterwards hatched. Great Clamours were raised against the pretended Roguery and Multitude of Attorneys, and an Act of Parliament was made to regulate them. How far that Statute has been of any Benefit to the Public is not now to be questioned; but it may, with great Truth, be asserted, that

that it has laid under great Hardships a Rank of Men in the Profession of the Law, whose good Characters and Fidelity are their very Support. And although it must be admitted there may be some bad Men amongst them (as there certainly are in every Profession, Trade, or Calling) yet whenever such bad ones are found, they are soon stigmatised, ruined and undone, either by their own Brethren, the Courts of Justice (to whom they are answerable for any Misbehaviour in their Practice) or by their Clients who desert them. Make what Laws you please to regulate any Trade or Profession, there will still be some incorrigible Knaves left in every one; there will still be Knaves amongst the Bakers, Millers, Drovers, and Butchers, and Pettifoggers. Amongst the Attorneys, a knavish Client who has dirty Work to do, will, if possible, find out a knavish Attorney. The natural
 Consequence

Consequence of this is, that these Rogues generally ruin one another; but because there are a few bad, to run hard upon a whole Body of Men, without whose Assistance the Laws, and Business of this rich and opulent Kingdom, cannot be executed, is unkind Treatment; to say that no Attorney shall have a right to be paid his just Fees and Disbursements until a Month after he has delivered his Bill, is to take away from him a natural Right that every common Labourer is entitled to, that is, to be paid for his Work as soon as done; nay, it is injurious, for generally speaking, three fourths of the Bill is Money paid out of Pocket for Stamp Duties, Officer's and Counsellor's Fees. It is not just, that for the Malpractices of a few, a whole body of Men should suffer; of whom, at the same Time this Law was made, there was not One out of above Six Thousand, who before practised as Attorneys,

neys, but was again admitted to practice, upon Payment of the Six Pounds Stamp Duty.

About the same Time that this hard Law was made to blacken the Character of a whole Body of Gentlemen, another Scheme was set on foot, to render the Law itself ridiculous and contemptible: Petitions to Parliament were encouraged, and several sent up by Grand Juries from *York*, and other Places, praying that all Law-Proceedings, Pleadings, and Records, might from thenceforth be in the *English* Tongue, and praying several other Alterations in the Law; whereupon an Act of Parliament was made, that all Proceedings in the Courts of Justice should be in *English*, and written in a common Secretary Hand: This was done under an Imagination or Pretence, that the Lawyers had invented the Law-Hands, wherein to lock up their Mysteries

Myſteries, and conceal their Craft, the better to enable them to cheat their Clients; but this is a Miſtake, for every one who is the leaſt converſant with ancient Manuscript-Books or Registers, knows that it was the People themſelves, who, from Time to Time, varied their hand-writing, and thereby gradually loſt the Knowledge of the Character, and Form of the Letters which their Forefathers made uſe of, and, in which, all the moſt ancient and beautiful Manuscript-Books as well as Deeds, Muniments, Law-Records, and Pleadings were written before Printing was in uſe.

Among many other bad Conſequences that muſt, in a few Years, enſue from this Alteration of the Language and Hand-writing of legal Proceedings, ſome are already at hand: Pleadings are now become about twice as long, in every Cauſe, as they were before,

the Records were written in a thousand different scribbling Hands; as unlike each other, as all of them are unlike the beautiful Court-Hands; and will be as difficult to be read or understood by our Grand-Children, as the fairest Record of the last Reign, is already become, to many learned Counsel, I had almost said to some of his Majesty's own Counsel learned in *English*-pleading, at the Barr.

The wretched Scrauls called our Records, at present, are not only infinitely different, but the horrid Jargon of the Contents thereof, called the Pleadings of One Single Term, has as many Dialects as there are special Pleaders, Drawers, or Translators thereof; and a Plea or a Declaration drawn or translated into barbarous *English* by a *Yorkshire* or *Lancashire* Man (every one easily conceives) must appear in a very different Dress from those drawn by a *Somerſetſhire* or a *Cornish* Man.

Every

Every Art or Science whatever, has certain Terms of Art, as well as a Language peculiar to itself; the Terms of Art and Language belonging to the Law, (before it became *English* Nonsense) had acquired most certain, fixed, and permanent Meanings; the Register of Writs, that famous Monument of Antiquity! and the very Ground and Foundation of the Law of *England*, is written in the *Latin* Language, and in the *Court of Chancery* Hand, which, although it be many Hundred Years old, is as legible and intelligible to any Man now living who was bred to the Law before it was turned into *English*, as it was to the very Person who wrote it; or, as if it had been written yesterday, but is now become almost as unintelligible to the greatest Part of the Gentlemen at the Barr, learned in the Law Jargon of the present Time, as an *Egyptian* Hieroglyphic, or as the
Gibberish

Gibberish of a parcel of Pleadings of these Days are still unintelligible to a Country Squire, or a Foxhunter.

The long Continuation of the same Hand-writing, with the certain fixed Meaning of every Word in the *Latin* (being a dead Language and invariable) rendered legal Proceedings shorter, clearer, and more intelligible, without the least Doubt at all as to the Meaning of the Words, whereas Deeds, or Records written in a varying Hand and Language, must, in the Nature of Things, render them more prolix and ambiguous, and in a few Generations, will be as hard to be understood as *Chaucer* and *Gower* are, almost to every one; and as many Parts of *Drayton*, *Spenser*, *Beaumont*, *Fletcher* and *Shakespeare* are now, even to Critics; for we know that *Pope*, the learned *Dr. W—n*, *Sir T. H—r*, and *Mr. Theobald*, all disagree about the true Meaning of several

several Passages in one of those *Divine* Authors: This, Experience shews us, is true, notwithstanding it is confessed that all the before-named Poets were the greatest Wits of their Times, and wrote in the purest, and politest Language thereof. Hence it appears that the Wisdom of our Ancestors in continuing the same Hand-writing, and Language for so many past Ages, cannot be enough admired, for we are thereby enabled to read and understand any original Charter of our Liberties, be it ever so ancient, whether it was obtained from the *Saxons*, *Danes*, or *Normans*, so long as there are any living among us who were at the Inns of Court in the last Reign; but if the Law shall continue in *English* a few Years longer, we shall be wholly deprived of this inestimable Jewel, unless the new Society of Antiquarians be providentially designed to preserve it among a few.

Those

Those who forwarded the making of this Act of Parliament, knew very well that no free People were ever openly inflaved, and deprived of *all* their Liberties at one Blow, but that this is to be done gradually, by giving them slow Poison in the Shape of Medicine, and stabbing the Vitals of the Constitution in the dark ; by introducing Ignorance under Colour of Science, and persuading the Subject that if he pulls out his own Eyes he will see better with those of others ; in short, by throwing a Cloud of Reflection and Dishonour upon a Profession, which, for Ages past, has produced more great and good Men for the Service of the Common Weal, and has contributed more towards the Preservation of the Constitution of this Kingdom, than any other particular Body of Men, or Profession in the State, whatever.

The

The Promoters of this Statute knew well enough that it must soon bring Disgrace upon the Profession of the Law, and plainly foresaw that every illiterate fellow, with a Face of Brass and a plausible Tongue would imagine himself well enough furnished to set up for a Lawyer as soon as he could read a Writ or Declaration, which, when once they became *English*, would be mighty easy, whereas before, it might be a little difficult without a School Education and a little Knowledge in the *Latin* Tongue; and surely it can be no Dishonour to the Law of *England* that its Professors ought to have a competent Knowledge of *Latin*: They knew well enough that the Clamours against the Law and Lawyers have generally arose from Offences committed by a few, who are always the most ignorant and illiterate of the Profession, and consequently the find-

D

ing

ing a Method to let a greater Number of unlearned Men into the Profession, must increase the Number of Mal-Practicers and Pettyfoggers, introduce greater Ignorance, and raise the Clamor higher against the Law and its Professors in general; and indeed this Statute seems to answer the End it was intended to serve, which has been already hinted at, and if it be not speedily repealed, we may expect to see Bankrupt Tradesmen and broken Shopkeepers, who can read and write a tolerable Book-keeping Hand, set up for special Pleaders, and practising the Law; nay, it may be truly said, that since the Law was *English*, and the Statute for better Regulation of Attorneys was made, some Persons who have been Servants to Lawyers have crept into the Office of an Attorney, to the Great Honour of the Profession!

The

The Office of Attorney is an Office of Great Trust, and before the two late Statutes, was held in such Estimation that it was no Disgrace to a Gentleman, or to a younger Son of One higher born, to be bred to it; however now it be the Fashion to despise it, indeed formerly it required a competent Knowledge in the learned Languages, but chiefly of the *Latin*; now it seems otherwise, for in these Days, if a Man can but write and read well enough to con over a little of the Dictionary of *Giles Jacob* *, and get at his Finger's Ends a few Cases, or *Notes of Cases in Points of Practice*, he is completely furnished for a Practitioner of the Law; but, if he be enabled to purchase *VINER*, he

* *Jacob* the Scourge of Grammar, mark with Awe,
Nor less revere him, Blunderbuss of Law.

POPE.

forthwith becomes an universal Lawyer.

As Index Learning turns no Student pale,
Who takes the Eel of Science by the Tail.

During the Usurpation of *Cromwell* when the Royal Family was banished, and the Constitution destroyed, the Law Proceedings were in *English*, when so many Inconveniences, and such Ignorance appeared that the *Latin* Tongue was again restored soon after the King's Return; and if any one will give himself the Trouble (as we have done) to look into the Law Proceedings of that Time, he will find them scarcely legible, and in a Jargon now almost unintelligible, being a very different Gibberish from *that* of the present Law-Pleadings.

Before the Law was in *English* the Pleadings were very short and concise, in Comparison to what they now are,
every

every *Noun* in the *English* Language having the *Article* joined to it, and every *Verb* being accompanied with the Sign of it's *Mood, Tense, Number,* and *Person*, infomuch that the Common Costs and Charges attending the Tryal of a Cause are now become nearly double to what they were in the last Reign, and are every Day increasing; some other Causes of this growing Evil may be assigned, besides the late Statute, particularly the Alteration of the Common Law, whereby every Man was bound to plead *singly*, and to put his Defence upon one single Matter only, whereas at this Time it is not uncommon for a Defendant, with the Assistance of an ingenious Gentleman, called a special Pleader, to plead three, four, five, or six Pleas, as opposite and contradictory in themselves, as black and white; and when Issues are joined upon all these Pleas, or Defences made, it becomes necessary

sary for the Plaintiff to answer them all, and to meet the Defendant at the Assizes, armed at all Points, and to have Witnesses ready to prove all the Issues joined, because he is wholly uncertain upon *which* of his Pleas or Defences the Defendant intends to rely at the Tryal of the Cause; this, every one sees, increases the Prolixity of the Pleadings, and the Expences of a Suit, insomuch that at this Day Eighty or a Hundred Pounds are frequently expended in the Tryal of a Right to a Foot Path cross over a Field, whereas before the late Alterations in the Law, the Expences of a Tryal in a like Case did not amount to half the Sum; the Expences of the Tryal of a Title to an Estate of Ten Thousand Pounds *per Annum* might have been defrayed for about Fourteen Pounds Ten Shillings, and the whole Record of the Pleadings, Verdict, and final Judgment in an Ejectment for that Purpose,

when

when the Law was in *Latin*, did not exceed Three Hundred Words, but at this Day we often see the Record in one Cause, in some Actions, amount to Ten Times as many Sheets, reckoning Seventy Two Words to a Sheet.

Among many other Instances which might be given of this growing Evil *Prolixity*, in *English* Pleadings, it may not be improper to point out *One* which happened this very Term in *Westminster Hall*; the Case was thus, A Plaintiff having a small Demand upon a Defendant for Goods sold and delivered to him, for Money lent, and some other little Matters, brings an Action against the poor Defendant, who probably is not able to pay the Debt immediately, but to render him less able to do it, the Plaintiff's Attorney produces in Court a Declaration of his Demand (supposed to be drawn by a special Pleader) containing

ing no less than Sixteen Counts, or Fifty Copy Sheets: whereupon the Counsel at the Barr for the Defendant, astonished at this monstrous Abuse of the Law Proceedings, on *Tuesday* the 14th of *November* 1758, moved the Court that the Declaration might be curtailed, and that Ten of the Sixteen Counts might be struck out of the Declaration, alledging to the Court that it appeared upon the Face of it, Six Counts were sufficient for the Plaintiff to ground his Demands upon; and that the other Ten Counts contained Nothing but Tautology and Surplusage: Whereupon the Rule pronounced by the Court on this Occasion (if the Person who heard it is not mistaken) was, that the Plaintiff or his Attorney should shew Cause at a future Day why the Subject Matter of this Complaint or Application to the Court should not be referred to a certain Officer of the Court (to whom,

for

for some Years last past, Matters of this Kind have certainly been generally sent) for him to look into the Declaration and the Plaintiff's Case, and report his Judgment thereof to the Court: In this Situation the Matter now stands, but what Remedy the poor Defendant will obtain, Futurity can only discover: Now if it shall appear to the Court, upon shewing Cause that the Fees of the Officer (to whom this Abuse is proposed to be referred) do increase in Proportion to the Length of, and multiply in the same Ratio with the Number of Counts in a Declaration, certainly the Court will put this Matter into some other Course of Examination; for, although it must be acknowledged that the Officer is a Man of as strict Honour as any Gentleman in *England*, yet the Policy of the Law will never endure that any Person whatever shall be judge in a Case wherein he himself

E self

self is, in the least, interested ; and therefore with great deference it is submitted, that this is not the proper legal Officer to whom these Kinds of Complaints ought to be referred, but that they ought to be redressed by the Lords the Judges themselves, who only are able to do more speedy and effectual Justice than can be done by any Officer of the Court whatever, whose proper Business is quite of another Kind, and merely clerical or ministerial ; besides, this Kind of Practice, like every other Innovation, occasions Delay and Expence to the Parties, which otherwise would not happen.

The Length of Pleadings have occasioned great Complaint against special Pleading since the Law became *English*, and some Attempts have been made to obtain a Law, that a Defendant, in every Case whatever, shall be at Liberty to plead the general Issue
and

and give the special Matter in Evidence ; and it is now fashionable, even among Barristers themselves, to ridicule this elegant Science, (which confessedly few of them at this Day understand) this distinguishing Part of the *English* Law, which *Littleton* (one of the best Judges and Lawyers that ever adorned the Profession, whose Book will be admired as long as we have any Learning, Law, or Liberty left among us) calls One of the most Honourable and laudable Things in our Law.

So long ago as the Time of *Edward III*, Pleadings were in their greatest Perfection, the Judges and Professors of the Law being then learned Men, and the Pleadings being, at that Time, drawn by the Serjeants at the Barr ; and the Exceptions also being taken at the same Time at the Barr ; which (as Lord *Hale* says) were rarely taken

for the Pleasure or Curiosity of the Pleader, but only when it was apparent that the Omission of the Matter excepted to, was, for the most Part, the Merit and Life of the Cause; and purposely omitted or mispleaded because his Matter or Cause would bear no better. By this Means the Question between the Parties was shortly reduced either to a Point of Law, and to be debated and determined by the Judges, or to a Point of Fact to be tried by a Jury; but of late Years Pleadings have been drawn out into excessive Length, and we may expect to see them as long as the Proceedings in Chancery, unless the Law-Hands and Language be restored, some Limitation be put to the Number of Pleas that a Defendant may plead, and a certain set of Gentlemen who are lately crept into the Profession of the Law, and are neither Attorneys, Solicitors, nor Barristers, but

but call themselves special Pleaders, be brought under some Regulation : For so long as they are to be paid a proportionable Sum to the Length of the Pleas they draw ; so long as a Defendant may plead as many Pleas as those very ingenious Gentlemen can invent for him ; and Pleadings are in *English*, we can never expect to see them shorter.

To strike off special Pleading absolutely in every Case, would not remedy this growing Evil of Prolixity in Law Proceedings, but would occasion many more and greater Inconveniences to the Subject than the wisest Man living can foresee ; for if the Defendant was at Liberty in every Case to plead the General Issue, and give any thing whatever in Evidence, it would be impossible for the Plaintiff to come armed with Witnesses to controvert

trovert a Matter of Defence wholly unknown and undiscovered to him; and Plaintiffs would not only be under the greatest Difficulties to recover their just Rights, but a Multitude of Facts as well as Matters of Law would arise, almost upon every Trial; and the Lent Assizes which at *York* have, sometimes of late, lasted three Weeks to the great Expence of the County, would be lengthened to three Months; and where we now have one special Verdict, we should necessarily have Twenty at least, if the special Matter was not to be known and pleaded in many Cases, and the Controversy between the Parties reduced to a Point of Fact before they come to the Assizes. Every one knows the great Length and Expence of settling and arguing special Verdicts, so that this proposed Remedy would not at all mend the Matter, but, in Truth,
would

would be a greater Grievance to the Subject.

The best Way to find out Cures for Evils of this Kind is, to look back into the Practice of our Ancestors; into Times when every Man in any Office or Station, touching the Administration of Justice, as well in respect to the Prerogative of the King as the Rights of his People, was obliged personally to do his own Duty; when there was no *sine cure*, no Place, Pension, Office, or Fee, without a Duty annexed; it when the Serjeants or Counsel at the Barr of the Courts declared to the Judges the particular Case or Demand of the Plaintiff or Demandant his Client, pursuant to the King's Writ issued from the Chancery; to which Declaration the Serjeant or Counsel at the Barr for the Defendant or Tenant, either prayed Time to imparl, *viz.*
to

to speak with his Adversary, in order to make an amicable End of the Controversy, or else for Time to be more fully instructed to make a proper Defence ; which the Court in their Discretion, and under the Circumstances of every particular Case granted, or not ; if Time was not prayed, then the Serjeant or Counsel for the Defendant gave his Answer, and the other replied, and so they alternately answered each other, until an Issue, in Point of Law or Matter of Fact, was settled and agreed upon at the Barr, in the Presence, and with the Advice of the Judges in Court ; if it happened to be an Issue in Law, then it was to be further considered and argued both by the Barr and the Bench at a future Day ; if an Issue of Fact, it was to be tried by a Jury of the Country.

At the same Time the Pleadings were thus fixed and settled in Court
at

in the hearing and with the Assistance of the Judges on the Bench, the chief Clerks or Prothonotaries, with their secondary Clerks, who have Seats in Court for that Purpose, took Minutes of the Pleadings, as fixed, settled, and agreed upon between the Parties, and entered them of Record in the Rolls of the Court. The Pleadings being thus settled by the most learned Persons of the Profession, were at that Time as concise, certain, and perspicuous, as human Wisdom and Policy could make them, and contributed greatly to put a speedy End to Suits.

But if we look into modern Practise in the Courts of Justice, we shall find that many of the most lucrative Offices are made *Sine Cures*, and that many Thousands *per annum* are paid to Officers in *Westminster Hall*, for Duties that they are either unwilling, or unable to perform; the

Lords the Judges have now no hand at all, and the Serjeants and Counsel at the Barr, very little, in settling the Pleadings; but they are almost wholly left to the Manufactory of the upstart Gentlemen before mentioned, formerly unknown in the Profession. No wonder therefore that so many Blunders in the Process of a Suit are continually made, to the infinite Expence of the Suitor, who does not only pay for making such Blunders, but is delayed in his Suit, and put to a further Expence in applying to the Court to have them mended; insomuch that it may be truly said at this Day, Nine Tenths of the Time of the Courts of Law in *Westminster Hall* are taken up in wrangling about correcting Irregularities and Blunders, before Justice can be come at. When the Pleadings are settled, it then becomes the Duty of the Prothonotary to enter them on Record in the Rolls of
the

the Court; but he (good Man!) never troubles his Head any further than writing down the Name of the Cause in a Book, and counting the Number of Sheets the Pleadings contain, and taking his Fees according to the Length thereof, leaving it to the Attorney's Clerk to do it, or not do it, *just as it happens*. This Expression falls not inadvertently; for the Writer affirms, upon his own Knowledge, that many Thousands of Pounds have been paid to *some* Officers in *Westminster Hall*, within the last forty Years, for Entries or engrossing Records in the Roll, which never were nor ever will be entered or ingrossed at all; having asserted this, it may be thought incumbent upon him to give an Instance of this Kind of Neglect of Officers in the Courts of Justice. For that Purpose therefore he says, that in or about *Easter Term*, 1727, a certain Person, who was a Clerk in one

of the Offices mentioned, and likewise acted as an Agent to Country and City Attorneys in passing their Common Recoveries, died; soon after whose Death, there were found locked up in his Desk and Chest of Drawers, many Scores of Writs of Entry and Notes of Recoveries passed at the Barr, for which this Clerk had been paid the Fees for compleating and entring the same upon Record, but which he had totally neglected to do, for the Writs of Entry were *alba brevia*; that is, the King's Fine for Alienation had not been compounded or paid, nor any one Step taken towards compleating the Record. This being so, it was soon discovered by two or three eminent Conveyancers of that Time, who had continual occasion to search for Recoveries; Mr. *Ward* and Mr. *Piggot* both knew it; that the latter certainly did, his *Treatise of Common Recoveries*, p 27,

plainly proves, where he advises the Parties concerned in a Title where a Recovery is supposed to be passed, to look carefully into it, and see whether the Writ of Entry be duly filed, and the Proceedings regularly entered; for (says he) “ *I have known some Attorneys so remiss as to take all the Fees for a Recovery, and barely take it at the Barr, and do nothing more.*” Now it would be impossible this Neglect could ever happen, if the proper Officer was obliged to do his Duty, that is to say, if he or his Clerks were to make an Entry or Record at the Time it is acknowledged and suffered by the Parties in Court, as was formerly done: Instead whereof he only writes down the Name of it, and his Fees, returning a Note of it to the Attorney, leaving him to enter it upon Record, or not, just as it may happen, as we before hinted.

After

After this Neglect, by the Death of the Clerk, was discovered to the Officer, we must do him the Justice to say that he did every thing in his power to compleat all the Recoveries upon the Writs of Entry which could be found, at the Expence of several Thousand Pounds; and by the Assistance of some Friends in Parliament (one of whom is now living) he got a Clause in an Act of Parliament to make Deeds to lead the Uses of Recoveries good Evidence of such Recoveries, after Twenty Year's Possession, although the same be not entered upon Record; and if any one reads the Clause for that Purpose, in the Stat. 14 *Geo. II.* to amend the Law concerning Common Recoveries, &c. he will plainly see that the Person who drew it, very well knew of this Matter.

Besides

Besides this, we know of many solemn Determinations in Law, whereof there remain no Footsteps at all: Which could not be so, if this Officer did his Duty; for it is the Business of this Officer, in the Case of every Issue, joined both in Law and in Fact, to see and take Care that the same be entered in the Roll, before the first be argued at the Barr, and before he sign the Record of *nisi prius* for sending the latter down to be tryed by a Jury. But what is the Practice? In the Case of a Demurrer or Issue in Law, the Attorney carries him a Roll with a Line or two written upon it (called an *Incipitur*) together with a Copy of the Pleadings in Paper, to enable the Officer to count the Number of Sheets they contain; for this he takes his Fees and puts a Mark to the Roll as a Receipt for his Fees; then he enters the Name of the Cause in a Book for
that

that Purpose, returns back the Pleadings in Paper, and the Roll, with a Line or two written upon it, to the Attorney, who may or may not enter the rest on the Roll: Or if his Clerk does enter it, possibly it may never be seen in the Treasury at *Westminster*, or become a Record there. This being done, Copies of this *supposed* Record are given in Paper to the Judges, and the Points of Law therein are debated in Court, and solemnly determined by them, when in Truth there is no such Record either actually in Court, or in the Treasury; when the Court gives Judgment, it then becomes the Duty of this Officer to see that it be fairly entered in the Roll, and carried into the Treasury; but instead of doing *that* which is his own Duty, and for which he is really paid, he does the Duty of another Person*, that is to

* In *Easter Term*, 11 *Jac.* I, a Rule was made, which among other Things recites, that of antient
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say, he signs the Judgment and taxes the Costs; for which signing of Judgment and taxing Costs, he receives One Shilling, and accounts for it to a superior, whose proper Duty it antiently was, and therefore still is, to sign Judgment and tax Costs, for there can be no Fee of Right, without a Duty: And whether any Judgment shall ever be entered, he knows nothing at all of it.

This Business of taxing Costs by the Prothonotaries, if it is not already, may (probably) soon become grievous to the Subject, for it is the Interest of each of these Officers to oblige Attorneys, upon whom the Profits of their several Offices absolutely, at present

Time no Costs of Suit could be given upon Judgments before the same were taxed and allowed by some of the Judges, which Usage continued a long Time, until it pleased the Court to depute and appoint the Prothonotaries for that Purpose. Therefore it is ordered, &c. see the Rule.

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depend,

depend, by allowing as large Costs as they possibly can, in order to draw Attorneys to practice, or enter Pleadings in their several Offices; it must indeed be acknowledged that the present Gentlemen who fill these Offices, are above such dirty Work, but there was a Time in the Memory of him now writing, when a great deal of this vile Trade was practised, and to prevent the like for the future, let the three puisne Judges, Persons independent and above all Temptation, tax the Costs and sign the Judgment as they antiently did as Assistant to the Chief Justice, or let the three Prothonotaries share the whole Profits of all their Offices equally.

The Practice, with regard to sending down Records of *nisi prius*, to be tried at the Assizes, is much the same, for not one Issue in Twenty is entered upon Record and carried into the Treasury at *Westminster* before it be
tried;

tried; and after the Issue is tried, not One Judgment in Twenty is ever entered on Record, though all these Things are paid for, to the proper Officer whose Duty it is to do them.

This being the Truth, we must not be surpris'd that there have been many great and solemn Determinations in one of the King's Courts of Record, within the last Fifty Years, whereof there are no Footsteps to be found, no Original Writ to ground the Proceedings upon, no Declaration, Plea, Issue or Judgment to be found, though the Names of the Causes and Pleadings may be found in the Books of the Offices, where the Fees were paid, and in some of the Reports. No foreign Lawyer would believe this; for the learned *Montesquieu* (that Admirer of our Laws and Constitution) says, " that Decisions in Courts of
 " Justice must be preserved and learnt
 G 2 " that

“ that we may judge in the same
 “ Manner to-day as yesterday, and
 “ that the Lives and Property of the
 “ Citizens may be as certain and fixed
 “ as the very Constitution of the
 “ State.” And indeed our Ancestors
 were so sensible of this Matter, that
 in order to preserve the Determinations
 and Judgments of Law to Posterity,
 two learned Persons were appointed
 by the Crown in every Court to write
 down and report the same faithfully.
 But alas! how strangely Things are
 altered! for at this Day every
 Bookfeller is at Liberty, provided
 he compounds with the Law-Printers,
 to publish whatever he purchases for
 Law; whence it comes to pass that
 in our later Reporters we find so many
 strange Contrarieties and Absurdities.

The Author of these Hints has some
 Reason to think that some of the Lords
 the Sages of the Law, begin to see
 some

some of these Inconveniences, and would be glad to reform them, but as such Reformation might tend to the Prejudice or Disinterest of Friends, it cannot be reasonably expected to take place suddenly, and therefore calls upon the Legislature, (who have lately shewn the highest Regard to the Lords the Judges and Sages of the Law, by deservedly giving them an Addition to their respective Salaries,) to reform some of the Grievances and Neglects hinted at.

In short, to prevent the Law-Proceedings from running into endless Prolixity, like those in Chancery, and to prevent broken Tradesmen, Goal-birds, and Footmen, and Servants to Lawyers, from commencing Lawyers and Attorneys, it is humbly proposed that the Law-Proceedings be turned into Latin. Secondly, That the Defendant shall be
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at Liberty to plead or avow two Matters or Defences, *and no more*, to one Declaration. Thirdly, That special Pleaders, as Persons unknown to the Courts, be either wholly prohibited, or put under such Regulation as the Legislature, in their Wisdom, shall think fit. And lastly, That every Person any way concerned in an Office, touching the Administration of Justice, be obliged strictly to do the Duty of his Office by himself, personally, or by his Deputy, if he may have one by Law; and that whoever receives a Fee in Right of any Office, or Place, touching the Administration of Justice, shall do the particular Duty for which he receives that Fee, on pain of Forfeiture of his Office; and such other Punishment as may be thought reasonable to the Legislature.

The King's Palace, or Court, was antiently the great and principal Seat
of

of Justice in this Kingdom, but in process of Time the Judicature of the King's Court came to be divided, by Reason (as is supposed) of the growing Wealth and Commerce of the Nation, which increased the Business thereof; this Division of the King's great Court, probably, began in the Time of King *Richard I.* or King *John*, and was compleated in the Reign of *Henry III.* by Virtue of the great Charters of the two last mentioned Kings. In King *John's* Charter, dated in the 17th Year of his Reign, it is said, *Communia placita non sequantur curiam nostram, sed teneantur in aliquo certo loco*; here, by the Word, *Curiam nostram*, may be fairly understood the King's Bench, because original Writs returnable there, are *Coram Domino rege ubicunque fuerit in Anglia*, i. e. before our Lord the King, where-soever he shall be in *England*; if this be true, its plain that by *Magna Charta*

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the King's Bench was not to have Cognifance of Common Pleas or Civil Suits; and, in Truth, for some Ages after *Magna Charta*, the King's Bench took no Connufance of civil Suits, unlefs in correcting the Errors of the Common Pleas, and of other the King's fuborninate and inferior Courts; and except in Suits, where an Officer of the Court was a party, and where the Defendant was *actually* in Cuftody of the Court, or of the Marfhall of the Court, for fome criminal Matter.

Nor did the Exchequer (a Limb of the great *Curia*) take Connufance of any civil Suit, where the King's Revenue, or Debtor, was not concerned; and, for fome Ages, thefe three great Courts fteered clear of each other, and confined themfelves within their refpective proper Spheres; the King's Bench took Connufance of all criminal Matters or Pleas of the Crown,
and

and corrected the Errors of other Courts; the Court of the *Bench* or the *Bank* (as it is antiently styled) held Plea in all civil Actions real and personal, between Subject and Subject, and the Exchequer dealt in all Matters touching the King's Revenue; but in later Times the two Courts of King's Bench and Exchequer incroached upon the Court of the Bank or Common Pleas, and have severally established Jurisdictions in civil Suits upon Fiction; for one of them tells you upon Record, that every Defendant sued by Bill is a Prisoner in Custody of the Marshal, and you have him safe; and the other says, if you will bring Grist, you may grind at the King's old Mill as freely as himself, or his own Debtors and Suitors; and though these are two strange Stories, yet no Man is permitted to contradict them. To be serious, they *both* have really quite outstripped the Common

H Bank;

Bank; for the Exchequer has extended its Arms all over the *Welsh* Mountains; and the King's Bench has got hold of the Counties *Palatine*, and been frequently nibbling at *Wales*: And, if they are not stopped, it is conjectured, they will sometime or other travel into *Scotland*: for if his Majesty should chuse to keep his Court, and reside in the *Orcades*, the King's Bench and Exchequer (being ambulatory) must certainly follow him thither; if this should happen, and the King's Bench and Exchequer continue to be permitted to hold Plea in civil Suits, a *Cornish* Man, in a Controversy about a Bunch of Turnips, may be drawn into the Highlands of *Scotland*, before a Court of *Scots* Lairds; if this should ever be the Case, the Lord have Mercy upon poor *Englistmen*!

This scrambling for Jurisdiction has created infinite Mischief and Inconvenience.

venience to the Subject; for instead of having one Rule of Law and Practice, you have three, or perhaps three thousand, which contribute not a little to that *glorious Uncertainty* so much extolled by Lawyers; for nothing is more common than for one Court to judge quite contrary to another; whereas if each Court was confined within its proper Limits, there would be but one Rule of Law and Practice; which, most certainly, would be more universally known and understood by every Man, and prevent infinite Mischiefs attending the Law and Practice thereof, as it now stands.

Let any one look into what are called the general Rules or Orders of the several Courts, especially into those from Time to Time made by the King's Bench and Common Pleas, a little before and since the Time of the Restoration of *Charles II*, 'till the Be-

ginning of this Reign, and he will clearly see that these two Courts, during that Time, have been continually scrambling for Business, and using every *triccum in lege* to draw Attorneys to practice in their respective Courts; I say, until the first Year of the present King, *for quis credat that any such strange doings have been since!*

About the Year 1674, when *North* was made Lord Chief Justice of the Common Pleas, he found there a long Catalogue of Officers picking their Fingers, without other Business to employ them; for the King's Bench, a little before that Time, had so outwitted the Judges and Officers of the Common Pleas, that the former (especially in *London* and *Middlesex*) ran away with the greatest Share of the Business in civil Suits: And this was done by gaining an easy Way of holding to special Bail upon Bills of *Middlesex*

Middlesex and *Latitats*. This indeed was only giving the *Common Pleas* a *Rowland for their Oliver*; for that Court thought to have excluded the King's Bench, by getting the Stat. 13 Car. 2. c. 2. Sess. 2. made, which enacts, that no Person shall be arrested by Process, issuing out of the *King's Bench* or *Common Pleas*, in which Process the true Cause of Action is not expressed, and for which the Defendant is bailable, by the 23 Hen. VI. Cap. 10. and shall be forced to enter into Bond with Sureties for Appearance in any Sum not exceeding 40*l*. This was done always, and of course in Original Writs returnable in the *Common Pleas*, but not in the *King's Bench*, in whose Process of *Latitat* and Bill of *Middlesex*, was only expressed these Words, *In a Plea of Trespass*, let the true Cause of Action be ever so different: Herein the *Common Pleas* thought they had
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nicked them; but the *King's Bench* were soon even with this Device; and therefore they added a Clause which is called an *Ac etiam Billæ*, i. e. *And also to answer to a certain Bill to be exhibited by the Plaintiff against the Defendant, according to the Custom of the Court of Our Lord the King, before the King himself in a Plea of Trespass upon the Case, upon Promise to the Damage of the Plaintiff of 100l. or of Debt upon Demand of 100l. as the Cause of Action happened to be; and then they said the Cause of Action was well set forth in their Writs, as the Statute directed. This was a great Advantage gained over the Common Pleas; for their Originals paid Fines to the King in Proportion to the Sum sued for, and were otherwise more expensive, because they contained the whole Declaration in Substance, and could not be made out so expeditiously as a short Bill of*

Middlesex

Middlesex or *Latitat* might be, which did not contain a Twentieth Part so many Words. The then Chief Justice of the *Common Pleas*, Sir *Orlando Bridgman*, and his Officers of the *Common Pleas*, gave this Way of Proceeding very ill Language, calling it an arbitrary Alteration of the Form of Legal Process, and utterly contrary to Law ; but the Losers might speak ; they got nothing else ; and *tricum in lege* carried it for the *King's Bench* ; which Court, as was said before, ran away with all the Business.

In this melancholy State Lord Chief Justice *North* found his Court of *Common Pleas*, when first he sat there ; and he having the sole Privilege of appointing or selling the greatest Part of the Offices in that Court, was much interested to find out a Way to put the *Common Pleas*, at least, upon a level with the *King's Bench* in this
 Matter ;

Matter; and used to say it was hard that his Court, which was instituted for Civil Suits, should be deprived thereof by a Court that was erected for Pleas of the Crown; and that it was a Shame to be outwitted; that he did not see but they had as much Power over the legal Process as the *King's Bench* had; and so at last determined to put in execution the same Device that they had used, which (he said) being good Law at one End of the Hall, would not be against Law at the other; and it was by doing the same thing in their Writs called *Clausum fregit*, or Common *Capias ad respondendum*; after Appearance to which, a Plaintiff might declare in an Action of Debt, or upon the Case, and file an Original Writ at any time before a Writ of Error brought, to warrant the Judgment, and support the Jurisdiction of the Court. This was by inserting the like Clause of

Ac

Ac etiam, &c. and then the *Common Pleas*, without original Writ, Fine to the King, or Delay, might hold to special Bail, upon the *Clausum fregit*, as the other Court did, upon their *Latitats* and Bills of *Middlesex*; here was fine whipping and spurring! here was Jockeyship for you!

The great Difficulties to be got over, which attended this Alteration in the Law, were, first, to reconcile the King's Interest; and next, the Lord Chancellor's. The King had Fines upon Original Writs, as was said before; and the Lord Chancellor disposed of the Places of the Curfitors, who made them out; but Lord *North* surmounted these Difficulties by promising that Care should be taken (and Orders were indeed made for that End) that Original Writs should be filed where they were necessary; and that the *Ac etiams* should not take place,

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but in such Cases only where a *Latitat* or *Bill of Middlesex* would serve, he persuaded the Officers of the Great Seal, of the Crown, and the Curfitors that they would be great Gainers by this Matter, if the Business could be drawn into the *Common Pleas*, where an Original must be sued out in almost every Case ; whereas in the *King's Bench*-Process by *Bill* or *Latitat*, there never is any Original at all. These fine Promises were swallowed, and so this Manner and Form of Practice in this Particular has continued ever since.

Formerly the Defendant, in all Cases whatever, had an Impar lance until the Term next after the Return of the first Process. But of later Years, if the Proceedings in the King's Bench were by original Writ, or the Common Pleas by a special Writ served upon the Defendant, which contained the Substance

stance of the whole Declaration; or for or against Attorneys, or other privileged Persons; or against Prisoners in Custody of the Marshall of the *King's Bench*, or Warden of the *Fleet*, the Courts have ruled that the Defendant was bound to plead, without any Imparlanee, the same Term wherein the Declaration was delivered, if it was delivered four Days before the End of the Term wherein the first special Process was returnable. And in these Cases Defendants had eight Days Time to plead, from the Time that the Rule was given for that Purpose. But if the Plaintiff proceeded by mesn Process, as Bill of *Middlesex*, or *Latitat* in B. R. or *Capias ad Respondendum* in the C. B. the Defendant still had an Imparlanee, that is to say, Time to plead, until the next Term after such Process was returnable; until about the Beginning of the present Reign, the Courts of Law, before

any of the present Lords the Judges sat therein, without any Precedent or Statute made for that Purpose, made several Rules and Orders, whereby Imparlanes are now almost wholly taken away from the Defendant, in every Case whatsoever ; so that at this Day the Rule is, that upon all Process (which takes in *mesn* Process as well as *Special*) returnable the first or second Return of any Term, if the Plaintiff declares in *London* or *Middlesex*, and the Defendant lives within 20 Miles of *London*, the Defendant shall plead within Four Days after such Declaration delivered without any Imparlance, and such Declaration may be delivered *de bene esse* (that is to say whether the Defendant has appeared, or put in Bail, or not ; or whether he be in Court, or not.) And in case the Plaintiff lives in any other County, or the Defendant lives above Twenty Miles from *London*, the Defendant shall

shall plead within Eight Days after the Declaration delivered, without any Imparlanee, and in Default of pleading, as aforesaid, the Plaintiff may sign his Judgment.

By Law every Man was intitled to One Imparlanee, and, at this Day, when any Statute gives an Action, it always is enacted that the Party shall have no more than one Imparlanee; which plainly shews that a Defendant might have had more than *one*, if the Court should have thought it reasonable.

This Alteration of the Law, by the Authority of the Judges who presided in the Courts of Justice the first and second Years of his present Majesty's Reign, without any Authority from Precedents, or Act of Parliament, may, perhaps, seem at first View, to be done for very wise and good
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Purposes, to enable Suitors to come at speedy Justice and prevent expensive Delays; but when this Matter, and the Consequences attending it, come to be fairly considered by any Gentleman or disinterested Lawyer of common Sense, it will be found to be quite otherwise, and that it favours a little of the Jockeyship between the two Courts in Lord *North's* Time.

Suppose a Defendant near *Berwick* upon *Tweed*, or at the *Land's End* to have been served with a *Latitat* the fifth of *November* last, returnable the very next Day the sixth, and the sum in demand to be forty Shillings, Part thereof due to the Plaintiff upon a promissory Note, Part for Goods sold, Part for Money lent, Part Money paid for the Defendant's Use, Part for Work done, and the Remainder upon an Account stated, amounting in the whole to about forty or fifty Shillings; and which the Defendant would have paid

Plaintiff

to the Plaintiff without any Suit at all, if he had been called upon before he was served with this Process (for two Suits out of three have their Foundation in Malice and Revenge) and the Attorney for the Plaintiff, as it is his Duty by the Rules of the Court, the very next Day the sixth of *November* delivers to the Defendant a Declaration of an Hundred Copy-Sheets *de bene esse*, which is before explained, with Notice to plead in eight Days or that Judgment will be signed; the Defendant in this Case, although he be ever so willing to pay this small Debt, will in Twenty four Hours Time be put to the immediate Expence of ten Pounds for Costs before he has Time to look about him, or even to speak to an Attorney to assist him in his hard Case. Can this be any Part of the Laws of *England* we so much extol and boast of? Certainly,

no.

But

But instead of a Demand for Money, suppose the Action be for a Trespass, wherein a Right to land is in Question, or any other Case where the Defendant may have a good Defence to make, the Time allowed for making that Defence is so short, that before it is possible for the Defendant's Attorney to draw up his Client's Case and lay it before Council, he must in all Probability have Judgment snapped against him by default, unless he rides Post to *London*, and applies to a Judge *at his Chambers* for Time to plead and make Defence, whereupon a Summon is obtained from the Judge's Clerk, who has blank Summons signed always ready, for the Plaintiff to attend the Judge at his Chambers to shew Cause why the Defendant should not have so many Day's Time to plead, which perhaps after two or three Summons and Attendances by the Parties
before

before the Judge or his Clerk, an Order for him to plead is obtained, at an Expence that was unknown to the Subject before Imparlanes were taken away.

By thus whipping and spurring on the Defendant, it often happens that neither his Attorney or Counsel have Time to settle his Plea so accurately as it ought to be, whereby an infinite Number of Blunders are daily committed, which occasion as many Applications to Judges at their Chambers, or to the Court, for Leave to amend those Blunders. This plainly creates more Delays and Expences, which could not so frequently happen if Imparlanes were not taken away.

Many other bad Consequences attending Innovations and new Rules of Practice might be shewn, if it were necessary; but from what has been al-

ready hinted, it must be submitted to every Man of common Sense, whether, when the taking away Imparlances was under Contemplation, the Profits to the Officers of the Courts of Law in *Westminster Hall*, and the Judges Clerks, were not more considered and thought of, than any Benefit that would thereby accrue to his Majesty's Subjects.

The *King's Bench* anciently had no Jurisdiction in Civil Suits, unless where the Defendant was *actually* in Custody of the Marshal, except in Suits by and against Officers of the Court, and in correcting Errors as below is said. The *Common Pleas* never had any original Jurisdiction in any Action real or personal, without an original Writ under the great Seal, except in Suits by, and against Officers of the Court; and Filasers were formerly punished whenever they presumed

med to make out any *mesn* Proceſs of *Capias*, *Alias* or *Pluries*, without an *original* Writ firſt purchaſed from the Crown, under the great Seal, to warrant and ground ſuch Proceſs upon, becauſe (as appears by the Rule in the *Common Pleas* of *Michaelmas* Term 14 *Jac.* I.) the King was thereby deceived of his Fines and Seals. The Judges in thoſe Days, who were ſworn to ſerve the King as well as to do equal Juſtice to his People, took Care of his Prerogative Rights; but how well thoſe Judges, who firſt took away *Imparlances*, and made *mesn* Proceſs almoſt equal to ſpecial Original Writs, have ſerved the Crown in this Matter, muſt be humbly ſubmitted to thoſe who have it in their Power to reform the Evils hinted; for at this Day, there is not one ſpecial original Writ ſued out, in fifty Suits, to ſupport or warrant the Jurisdiction of the Courts of Law; that this is

true, the Cursitors of the Chancery know very well. One single Instance more shall be given of the Inconvenience of attending every Alteration in the Law, or Practice, by the Orders of the Judges, because it happened this very Term, since the last Paragraph above was written. In *Michaelmas* Term, in the first Year of his present Majesty, an Order of Court was made (among other Things for the great Advantage of the Officers) that in Case, where a Defendant is served with a Copy of Process, the Plaintiff's Attorney must *leave the Declaration in the Office**, and give Notice of it to the Defendant, by delivering an English Notice in writing to him, or leaving the same at the last, or most usual Place of Abode of such Defendant, signifying the *Nature of the Action*, at

* By this the Officer secures his Fees for entering it on Record, though one in forty is not entered.

whose Suit it is prosecuted, and in whose Office such Declaration is left. Upon the 23d of *November* 1758, in a *Yorkshire* Cause between *Graves* and *Wise*, a Judgment of the Court was set aside, because in the Notice of the Declaration which was given to the Defendant, it was said, that a Declaration was left in the Office in an Action at the Plaintiff's Suit against the Defendant, *for Work and Labour done for him by the Plaintiff*; the Objection made by the Defendant's Counsel was, that the Notice did not signify to the Defendant the Nature of the Action, and that the Notice ought to have said, *in an Action of Trespass upon the Case*. But with great Deference to those who gave the Rule for setting aside the Judgment, the Words, *In an Action for Work and Labour done for the Defendant by the Plaintiff*, are more intelligible to every body, except a Limb of the Law, than the

the unintelligible Jargon of the Words *Trespass upon the Case*. However the honourable Judges thought otherwise. The Consequence of setting aside the Plaintiff's Proceedings upon this quibbling Objection to the Notice, is, that the poor Plaintiff has been put to the fruitless Expence of ten or twelve Pounds; for it appeared, upon the Motion to the Court, that a Writ of Inquiry of Damages was to be executed at *York*, as the very next Day, *viz.* the 24th of *November* 1758, so that he was at the End of his Suit; and that the Declaration was of *Michaelmas* Term 1757, so that the Notice, being adjudged ill, is as nothing at all, and the Parties (by this Practice) are now both out of Court, and the Plaintiff, if ever he intends to venture to sue for his Right again, must begin at the Beginning of his Suit and run the Hazard of losing as much more by some other Quibble of the like Kind, as he

has

has already done. This Particular Case is here set down, because it is so fresh in Memory ; but if any one will give himself the Trouble to look into two or three modern Books of Practice, he will meet with many Hundreds of similar Cases or more properly Quibbles, which could happen but very seldom (if at all) were there any Certainty or Stability in the Rules of Practice ; but with great Deference, so long as Acts of Parliament, making Alterations in the Law, are continually passing, and the Courts themselves make Rule upon Rule, and Order upon Order to change and vary the Law and Practice thereof, we must not wonder, that, after serving a Clerkship or ten Times as long, an Attorney for ever remains ignorant of his Business.

The monstrous Increase of the Expence of Law Suits, arising from the extravagant Fees of Counsel, Officers, Stamp

Stamp Duties, &c. &c. as well as from many other Causes which have been already hinted at, and many others that might be mentioned, have very nearly destroyed the Law, and deprived the Subject, of his most valuable Birthright ; for it is the same Thing to the Subject, whether Right be denied him, or so high a Price be set upon it, that he is unable to purchase it. These Evils are daily before our Eyes, yet is there no Man to be found who will lend the Assistance of his little Finger to remove them. The above few Hints, which are most certainly true, and not in the least exaggerated, are therefore most earnestly recommended to the Consideration of those, who have Power to correct the Mischiefs and Inconveniencies, so loudly, at this Time, complained of.



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